

M. GALE LEMMON #4363
Assistant Attorney General
MARK L. SHURTLEFF #4666
Attorney General
Attorneys for Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114
Telephone (801) 538-3872

RECEIVED
APR 27 2005
UTAH STATE
INSURANCE DEPT.

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

**STIPULATION
&
ORDER**

RESPONDENTS:

TODD MICHAEL SMITHSON
License No. 138787
JARED TALMADGE SMITHSON
License No. 192045
SAFE RETIREMENTS, LLC
License No. 104704
1023 North University Ave., Suite 203
Provo, UT 84064

Docket No. 2005-044 LF

Enf. Case Nos. 1585, 1586, & 1588

STIPULATION

1. Respondent, Todd Michael Smithson, is a licensed insurance agent in the State of Utah, holding License No. 138787. Respondent, Jared Talmadge Smithson, is a licensed insurance agent in the State of Utah, holding License No. 192045. Respondent Safe Retirements, LLC, is a licensed insurance agency in the State of Utah owned by Respondents Todd and Jared Smithson, Utah License No. 104704.

2. Respondents stipulate with the Complainant, Utah Insurance Department, as follows:

a. If a hearing were held, witnesses called by the Complainant could offer and

M. GALE LEMMON #4363
Assistant Attorney General
MARK L. SHURTLEFF #4666
Attorney General
Attorneys for Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114
Telephone (801) 538-3872

RECEIVED
APR 27 2005
UTAH STATE
INSURANCE DEPT.

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

**STIPULATION
&
ORDER**

RESPONDENTS:

TODD MICHAEL SMITHSON
License No. 138787
JARED TALMADGE SMITHSON
License No. 192045
SAFE RETIREMENTS, LLC
License No. 104704
1023 North University Ave., Suite 203
Provo, UT 84064

Docket No. 2005-044 LC

Enf. Case Nos. 1585, 1586, & 1588

STIPULATION

1. Respondent, Todd Michael Smithson, is a licensed insurance agent in the State of Utah, holding License No. 138787. Respondent, Jared Talmadge Smithson, is a licensed insurance agent in the State of Utah, holding License No. 192045. Respondent Safe Retirements, LLC, is a licensed insurance agency in the State of Utah owned by Respondents Todd and Jared Smithson, Utah License No. 104704.

2. Respondents stipulate with the Complainant, Utah Insurance Department, as follows:

a. If a hearing were held, witnesses called by the Complainant could offer and

introduce evidence that would support the Findings of Fact herein;

b. Respondents admit the Findings of Fact and Conclusions made therefrom;

c. Respondents stipulate to the summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and

d. Respondents and Complainant have negotiated the terms of the Order entered herein and Respondents agree to its entry and further agree to be bound by all its terms.

3. Respondents are aware of their right to a hearing at which they may be represented by counsel, present evidence and cross-examine witnesses. Respondents have irrevocably waived their right to such hearing and to any appeal related thereto.

4. Respondents admit the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondents are acting herein free from any duress or coercion of any kind or nature, having been advised fully as to their rights set forth herein.

6. Respondents acknowledge that the issuance of this Order by the Commissioner is solely for the purpose of disposition of the matter entitled herein.

DATED this 20 day of April, 2005.


UTAH INSURANCE DEPARTMENT
M. Gale Lemmon, Assistant Attorney General


TODD MICHAEL SMITHSON


JARED TALMADGE SMITHSON


SAFE RETIREMENTS, LLC
Todd Michael Smithson, Member

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

FINDINGS OF FACT

1. In late September 2003, Respondents Todd and Jared Smithson placed a newspaper advertisement ("the advertisement") in the Salt Lake City daily newspapers, The Deseret Morning News and The Salt Lake Tribune, seeking to generate leads and interest in their services as insurance agents.

2. The advertisement identified Respondent Todd Smithson by name, but failed to identify him as an insurance agent.

3. The advertisement contained false or misleading information regarding the background and experience of Respondent Todd Smithson, including, inter alia, a claim that he was a "well known financial authority", that he "developed unique strategies to increase retirement income by 20%", and that he had authored a book "Mistakes that Seniors Make with their Finances."

4. The advertisement falsely claimed that "IRA and 401k owners can get 10% gains without the risk of losing money..." without disclosing that a 10% return was the maximum achievable and that most years the return was less than that amount.

5. During the same period of time, Respondents Todd and Jared Smithson mailed a flyer ("the flyer") to those who responded to the advertisement that used the name of an unlicensed insurance agency, Wealth Strategies, Inc. Further, no such corporation existed with that name, and the name Wealth Strategies, Inc. was deceptively close to an existing licensed insurance agency in the State of Utah, Wealth Strategies Insurance Agency.

6. The flyer contained false or misleading information regarding the quality of the insurance products the Respondents were selling, including, inter alia, that there was "Reward Without Risk", that an investor "can't lose money" and "can't get hurt", that the investment had "complete safety and security" and had the "protection of [a] CD" and "the gains of the S&P 500 Index", and that the investor had "easy access to your money at all times."

7. The flyer contained a description of a product that didn't exist, but that was a composite description of two different products.

8. The flyer failed to identify the insurers whose products were being described.

9. The flyer guaranteed that the index annuities being sold were "free from probate" without disclosing that certain conditions had to be met for that to be accurate.

10. The flyer used testimonial statements and the Respondents failed to retain records of the testimonials for three years after their last use.

11. The flyer failed to identify Todd Smithson as an insurance agent and misrepresented his background and experience in the same way as in the advertisement, and guaranteed the "highest degree of expertise."

12. In mid November 2003, Respondent Todd Smithson met with a resident of the State of Utah and marketed and took an application for an annuity for Jefferson Pilot Life Insurance Company, but was not contracted or appointed with that company.

13. Respondent Jared Smithson, who was contracted and appointed with Jefferson Pilot Life Insurance Company, signed and submitted the application for the annuity certifying he was the agent making the sale.

14. At the time of the presentation, Respondents Todd and Jared Smithson used the name of Safe Retirements in the presentation and in advertisements as the agency they worked for. However, no entity named Safe Retirements existed in the State of Utah, and was not licensed by the Utah insurance department.

15. During the presentation, Respondent Todd Smithson falsely represented that there were no fees or costs connected with the annuity, when there were front loaded fees charged for the purchase of the annuity.

16. When questioned about the sale by the insurer of the annuity, Respondents Todd and Jared Smithson made false or misleading statements to the insurer about who made the sales presentation to the purchaser of the annuity.

17. Respondent Todd Smithson failed to timely respond to inquiries of the commissioner sent to him in March, April and June of 2004. Respondents Todd and Jared Smithson gave incomplete or inaccurate information in their responses to the commissioner on at least three occasions.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. In disseminating an advertisement regarding insurance that contained false or misleading information, Respondents Todd and Jared Smithson violated Utah Code Annotated § 31A-23a-402(1)(a)(i), and Utah Administrative Code Rule R590-130-6.A and 6.B.

2. In disseminating an advertisement that failed to give the name of the actual insurer, Respondents Todd and Jared Smithson violated Utah Administrative Code Rule R590-130-12.A.

3. In failing to disclose in the advertisement that Respondent Todd Smithson was an insurance agent, Respondents Todd and Jared Smithson violated Utah Administrative Code Rule R590-154-7.A.1.

4. In mailing a flyer to prospective insureds that failed to disclose that Respondent Todd Smithson was an insurance agent, Respondents Todd and Jared Smithson violated Utah Administrative Code Rules R590-154-7.A.1 and R590-79-6.B.

5. In using the name of Wealth Strategies, an unlicensed insurance agency, in connection with the solicitation of insurance, Respondents Todd and Jared Smithson violated Utah Code Annotated § 31A-23a-103(1)(c) and Utah Administrative Code Rule R590-154-7.D.

6. In using the name of an unlicensed insurance agency that was deceptively similar to an existing licensed insurance agency in the State of Utah, Respondents Todd and Jared Smithson violated Utah Administrative Code Rule R590-154-5.A(2).

7. In using a flyer in connection with the solicitation of insurance that contained false or misleading information, Respondents Todd and Jared Smithson violated Utah Code Annotated § 31A-23a-402(1)(a)(i).

8. In using a flyer in connection with the solicitation of insurance that failed to identify the insurer whose products were being described, Respondents Todd and Jared Smithson violated Utah Administrative Code Rule R590-130-12.A.

9. In representing an insurer in an insurance solicitation when he was not contracted or

appointed with that insurer, Respondent Todd Smithson violated Utah Code Annotated § 31A-23a-408.

10. In signing an application for an annuity as the agent making the sale when he did not meet with the insureds, Respondent Jared Smithson violated Utah Code Annotated § 31A-23a-402(1)(a)(i).

11. In making false or misleading statements to the insurer about who made the sales presentation to the insureds, Respondent Todd and Jared Smithson violated Utah Code Annotated § 31A-23a-402(1)(a)(i).

12. In using the name of Safe Retirements in marketing insurance when the agency was not licensed at the time, Respondent Safe Retirements, LLC violated Utah Code Annotated § 31A-23a-103(1)(a), and Respondents Todd and Jared Smithson violated Utah Code Annotated § 31A-23a-103(1)(c).

13. In making statements in a sales presentation to insureds that were false or misleading, Respondent Todd Smithson violated Utah Code Annotated § 31A-23a-402(1)(a)(i).

14. In failing to timely and accurately respond to inquiries of the commissioner, Respondent Todd violated Utah Code Annotated §§ 31A-2-202(4).

15. In providing information to the commissioner that was not accurate and complete, Respondents Todd and Jared Smithson violated Utah Code Annotated § 31A-2-202(6).

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following Order:

ORDER

IT IS HEREBY ORDERED:

1. Respondent Todd Michael Smithson is assessed an administrative forfeiture in the amount of \$5,000.00, to be paid within 30 days of the date of this Order.

2. Respondent Jared Talmadge Smithson is assessed an administrative forfeiture in the amount of \$2,000.00, to be paid within 30 days of the date of this Order.

3. Respondent Safe Retirements, LLC is assessed an administrative forfeiture in the amount of \$250.00, to be paid within 30 days of the date of this Order.

4. The licenses of Respondents Todd Michael Smithson, Jared Talmadge Smithson, and Safe Retirements, LLC are each placed on probation for a period of 24 months beginning with the date of this Order. The terms of probation are as follows:

- a. Respondents shall pay the administrative forfeitures assessed herein in a timely manner.
- b. Respondent Safe Retirements, LLC, shall employ, and Respondents Todd and Jared Smithson shall be supervised in all their insurance activities by a licensed agent acceptable to the commissioner, and who shall agree in writing to supervise the insurance activities of Respondents Todd and Jared Smithson during the period of probation.
- c. Respondents shall use no advertising or promotional material regarding insurance that contains any false or misleading information, including information that is false or misleading because it is incomplete.
- d. During the period of probation, Respondents Todd and Jared Smithson shall, in addition to the continuing education required to maintain their insurance agent's licenses, shall each take an additional 18 hours of continuing education per year. Said additional continuing education shall qualify as leading to a recognized

professional insurance designation, and each shall report the additional continuing education each year to Randy Overstreet, or such other person as the commissioner may designate, by December 31st of each year.

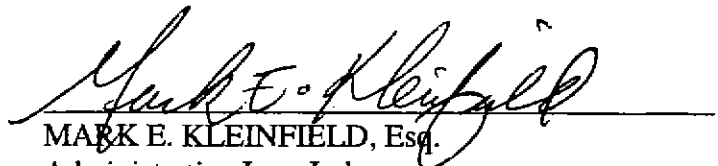
- e. Respondents shall have no further violation of the Utah Insurance Code or Rules or of any order of the commissioner.

NOTIFICATION

Respondents are hereby notified that failure to abide by the terms of this Order may subject them to further penalties, including additional forfeitures of up to \$5,000.00 per violation for an organization and of up to \$2,500.00 per violation for individual licensees, and the suspension or revocation of their licenses, and the filing of an action to enforce this Order in the District Court which may impose penalties of up to \$10,000.00 per day for continued violation.

DATED this 28th day of April, 2005.

D. KENT MICHIE
INSURANCE COMMISSIONER



MARK E. KLEINFELD, Esq.
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone (801) 538-3800

CERTIFICATE OF MAILING

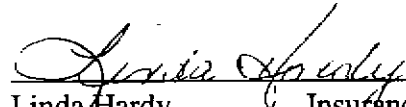
I do hereby certify that on this date I mailed, by regular mail, postage prepaid, a true and correct copy of the attached:

**STIPULATION
&
ORDER**

To the following:

**TODD MICHAEL SMITHSON
JARED TALMADGE SMITHSON
SAFE RETIREMENTS, LLC
1024 North University Ave., Suite 203
Provo, UT 84604**

DATED this 28th day of April, 2005


Linda Hardy Insurance Technician
Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901
(801) 538-3813

Invoice**Due Date** 05-28-2005**Amount Due**

\$5,000.00

Invoice ID 243503**Payor ID** 68526**Total Amount Remitted** \$

Make Checks Payable To:

Utah Insurance Department**3110 State Office Building****Salt Lake City, UT 84114-6901**

TODD MICHAEL SMITHSON
1021 N UNIVERSITY AVE STE 203
PROVO UT 84604

Invoice ID 243503**Payor ID** 68526**Invoice Print Date** 04-28-2005**Items:**

04-28-2005 Monetary Penalty Individual

5,000.00

Amount Due..... \$5,000.00

Invoice**Due Date** 05-28-2005**Amount Due**

\$250.00

Invoice ID 243518**Payor ID** 13606**Total Amount Remitted** \$

Make Checks Payable To:

Utah Insurance Department**3110 State Office Building****Salt Lake City, UT 84114-6901**

SAFE RETIREMENTS, LLC
1021 N UNIVERSITY AVE STE 203
PROVO UT 84062

Invoice ID 243518**Payor ID** 13606**Invoice Print Date** 04-28-2005**Items:**

04-28-2005 Monetary Penalty Company

250.00

Amount Due..... \$250.00

Invoice**Due Date** 05-28-2005**Amount Due**

\$2,000.00

Invoice ID 243520**Payor ID** 79909**Total Amount Remitted** \$

Make Checks Payable To:

Utah Insurance Department**3110 State Office Building****Salt Lake City, UT 84114-6901**

JARED TALMADGE SMITHSON

357 W 400 N #D

OREM UT 84057

Invoice ID 243520**Payor ID** 79909**Invoice Print Date** 04-28-2005**Items:**

04-28-2005 Monetary Penalty Individual

2,000.00

Amount Due..... \$2,000.00